
(2023) 04 CESTAT CK 0006

In the Customs, Excise And Service Tax Appellate Tribunal

Case No : Service Tax Appeal No. 60347 Of 2022

M/S Sunrise Immigration Consultants Private Limited

APPELLANT

Vs

CG & ST-Chandigarh

RESPONDENT

Date of Decision : 11-04-2023

Acts Referred:

Income Tax Act, 1961 — Section 243

Central Excise Act, 1944 — Section 11AA, 11BB, 11DD, 11AB, 11B, 11BB, 35FF

Citation : (2023) 04 CESTAT CK 0006

Hon'ble Judges : S. S. Garg, Member (J)

Bench : Single Bench

Advocate : Varun Gaba, Rajeev Gupta, Amandeep Kumar

Final Decision : Allowed

Judgement

S. S. Garg, Member (J)

1. The present appeal is directed against the impugned order dated 25.07.2022 passed by the Ld. Commissioner (Appeals) wherein the Ld. Commissioner (Appeals) has rejected the appeal of the appellant for claim of interest on delayed refund.

2. Briefly stated the facts of the case are that the appellant is engaged in providing Visa Consultancy Services to its various clients who wishes to study or settle down in the foreign country. The appellant was duly registered with the department for providing taxable services under the category of 'Commercial Training and Coaching' and other taxable services. During the relevant period, a dispute was going on between the appellant and the department with respect to taxability of referral services rendered by the appellant and the department was of the view that the services provided by the appellant to Canadian banks and foreign universities/colleges does not amount to export of services as the provision of the services is the location of the service provider i.e., India. The appellant were issued three show cause notices, show cause notice –I dated

20.10.2014 (April 2009 to March 2014), show cause notice-II dated 20.04.2019 (April 2015 to March 2016), show cause notice-III dated 22.04.2019 (April 2016 to June 2017) and when these show cause notices were pending for adjudication, the appellant in order to safeguard themselves from the charge of interest and penalty as well as to buy mental peace, deposited the amount under protest totalling to Rs. 25,39,804/-. The amount was paid in four tranches starting from July 2014 (before issuance of the first show cause notice) when the investigations were going on against the appellant and last payment in April 2015. The said amount was paid under protest as the dispute was going on between the appellant and the department. Thereafter, with regard to show cause notice -I dated 20.10.2014, the demand proposed was confirmed against the appellant by the adjudication as well as by the appellate order. The appellant against the said appellate order preferred an appeal before this Tribunal and this Tribunal after considering the submissions made, decided the issue regarding provision of referral services in favour of the appellant and dropped the demand confirmed against the appellant vide its order dated 16.03.2018. Pursuant to the order of this Tribunal, the appellant filed a refund claim on 10.05.2018 seeking refund of Rs. 25,39,804/-(deposited under protest for the year 2014-2015). Thereafter, a show cause notice dt. 24.01.2019 was issued to the appellant proposing to reject the refund claim and vide order-in-original dt. 24.12.2019 rejected the refund claim. The findings of the adjudicating authority was confirmed and upheld by the Ld. Commissioner (Appeals) vide its order dated 11.01.2021. Thereafter, the appellant preferred an appeal before this Tribunal and this Tribunal vide its order dated 14.06.2021 allowed the appeal by setting aside the order-in-appeal and it was held that the refund claim filed by the appellant was within limitation. Thereafter, the appellant wrote letters to the department for granting of refund claim which was finally sanctioned vide order dated 13.04.2022 under Section 11B & Section 11BB, however, no interest was granted to the appellant. Thereafter, the appellant filed a letter with department requesting to grant the interest for the delayed refund but in reply to the said letter, the appellant was simply asked to avail the appellate remedy without providing any reasoning for not granting the interest. Thereafter, the appellant preferred an appeal against the said order dated 13.04.2022 but the Ld. Commissioner (Appeals) denied the interest by rejecting the appeal of the appellant vide its order dated 25.07.2022 with a finding that the refund claim was duly sanctioned within three months from the date of filing the refund application.

3. Heard both the parties and perused the records.

4. Ld. Counsel for the appellant submitted that the impugned order is not sustainable in law as the same has been passed without properly appreciating the facts of the case and law and the binding judicial precedents on the same issue. He further submitted that the amount paid by the appellant was under protest and to avoid the implication of huge liability of interest and penalty, when the investigation and dispute was going on for the prior period and the

subsequent period. He further submitted that this Tribunal itself recorded the facts while passing order dated 14.06.2021 that the dispute was going on between the appellant and the revenue when the service tax was paid for the period 2014-2015. He further submitted that the impugned refund claim was sanctioned by accepting the facts that it was paid under protest and it was held that the impugned refund claim is not time barred. He also submitted that the Ld. Commissioner (Appeals) has erroneously concluded that the date of filing of refund application would be considered from the filing of the bank details by the appellant whereas the fact of the matter is that the bank details were already there with the department because the department sanctioned the refund claim for the prior period to the appellant. He further submitted that since the appellant has paid the amount when the investigation and proceedings were going on and moreover no show cause notice for the period in dispute i.e. 2014-2015 was issued to the appellant. He also submitted that the amount deposited remained an amount or deposit, as the same was neither appropriated nor any demand was raised against it and therefore, Section 11B and 11BB would not be applicable in the present case and the interest has to be granted from the date of deposit. For this submission, he relied upon the following decisions:-

- M/s Parle Agro Pvt. Ltd. vs. Commissioner, CGST, Noida (Vice-Versa) 2021 (5) TMI 870-CESTAT Allahabad
- Bird Audio Electronics vs. Commissioner, CGST North Delhi, 2022 (5) TMI 795 – CESTAT New Delhi
- Jagdamba Ispat & Jagdamba Tmt Mills Ltd. vs. Commissioner, CE & CGST-Jaipur-I-2022 (7) TMI 520-CESTAT, New Delhi.
- M/s Ishwar Metal industries vs. Commissioner, CG & ST, Jaipur-2022 (1) TMI 1176-CESTAT New Delhi
- M/s Prem Jain Ispat Udyog vs. CGST & ST, Udaipur-2022 (5) TMI 645-CESTAT New Delhi.
- M/s Pensla Exports Pvt. Ltd. vs. CCE & ST Jalandhar 2019 (12) Ld. Counsel also submitted that this Tribunal has already decided the matter involving similar facts wherein this Tribunal has granted the interest from the date of deposit till its realization @ 12% per annum and he cited the following decisions:-
- Shahi Exports Ltd. vs. Commissioner of CE & ST- Haryana 2021 (130) taxman.com 476 (Chandigarh-CESTAT)
- M/s Fujikawa Power & M/s Kenzo International vs. CCE & ST, Chandigarh-I 2019 (11) TMI 1197
- M/s Marshall Foundry & Engg Pvt. Ltd. vs. Commissioner of CGST, Faridabad 2019 (11) TMI 1269
- M/s Marshall Foundry Works Pvt. Ltd. vs. Commissioner of CE & ST,

Faridabad-2022 (3) TMI 801.

5. On the other hand, the Ld. DR filed detailed written submissions mainly on the issue that the amount deposited by the appellant was not under protest and during investigation, the investigation was conducted for the period upto 2013-14. He further submitted that during the impugned period i.e. for the year 2014-2015, no show cause notice was issued to the appellant hence no investigation was conducted and the appellant in his own volition, paid the service tax for the year 2014-2015. He also submitted that the appellant self-assessed his service tax liability for the year 2014-2015 and made the payment through service tax Challans under proper accounting heads and filed ST-3 returns and no revised return was filed by the appellant. He further submitted that the Tribunal's order dated 14.06.2021 allowing the refund of the appellant does not talk about the payment made under protest. He further submitted that the service tax was paid to safeguard themselves from the charge of interest and penalty as well as to buy mental peace and thus it cannot be equated with payment made under protest. He further submits that even if the amount is paid under protest still it would be processed under Section 11B only. Lastly with regard to rate at which interest is to be paid, he submits that the interest should be granted to the appellant at the rate of 6% and not 12% under Section 11BB. In support of his submissions, the Ld. DR relied upon the following decisions:-

- Veer Overseas Ltd. Vs. Commissioner of Central Excise, Panchkula 2018 (15) G.S.T.L. 59 (Tri. Lb)
- M/s Shree Balaji Warehouse & Ors. Vs. CGST Panchkula 2022 (2) TMI 900-CESTAT Chandigarh
- The State of Uttar Pradesh & Ors. Vs. M/s Kay Pan Fragrance Pvt. Ltd. 2019 (12) TMI 95 SC
- Larsen & Toubro Ltd. vs. CCE Indore, Division Bench of CESTAT New Delhi 2013 (295) ELT 572 (Tri. Del.)
- Ratnamai Metals vs. CCE & ST Ahmedabad-III 2019 (366) ELT 139 (Tri.-Ahmd.)
- Dee Kay Exports vs. UOI-2020 (371) ELT 200 (P & H)
- Ranbaxy Laboratories Ltd. vs. UOI 2011 (273) ELT 3 (S.C)
- State of Punjab vs. Atul Fasteners Ltd. – 2007 (211) ELT 519 (SC)
- Afcons Infrastructure Ltd. vs. UOI – 2014 (309) ELT 40 (Del.)
- CCE Mumbai-I vs. Inters Cape, vide order no. M/190/2011/EB/C-II dated 21.01.2011
- Nino Chak of Delhi HC 2020 (371) ELT 701-Delhi
- CC vs. ITC Ltd. 2005 (179) ELT 15 (SC)

- UOI vs. Tata SSL 2007 (218) ELT 493 (SC)
- Commissioner of Income Tax, Gujarat vs. Gujarat Fluro Chemicals 2017 (51) STR 236 (SC)
- CCE & ST Rohtak vs. M/s Som Flavour Masala Pvt. Ltd. vide Final order No. 60385/2022 dated 02.03.2020.
- UOI vs. Willowood Chemicals Pvt. Ltd. 2022 (60) GSTL 3 (SC.)

6. Ld. Counsel for the appellant filed written submissions rebutting the written submissions made and the judgement relied upon by the respondent in his rebuttal. The Ld. Counsel for the appellant has tried to distinguish the present case from the decisions relied upon by the revenue on the ground that the facts in those decisions were entirely different whereas in the present case amount was deposited under protest during investigation and finally refund was sanctioned and it was held by the Tribunal that the same is not barred by limitation.

7. I have heard the rival submissions made by the parties and has considered the submissions of the parties and has also gone through the judgements relied upon by both the parties, the only issue involved in the present case relates to non sanctioning of the interest on the refund sanctioned by the department and further the rate of interest on delayed refund. This issue has been considered by the Tribunal in various cases and it has been consistently held that the assessee is entitled to claim interest from the date of deposit till the date of payment at the rate of 12%. Further, I find this Tribunal in the case of Reba Textiles Ltd. after considering the various decisions held that the assessee is entitled to claim interest from the date of payment of initial amount till the date of its refund and further the Tribunal relied upon the decision of Kerala High Court as well as the decision of the Ahmadabad Tribunal and thereafter granted the interest at the rate of 12% per annum.

Here, It is pertinent to mention Para 19, 20 and 21 of the said judgment which are reproduced below:-

19. Further, the interest on the refund shall be payable @ 12% per annum as held by Hon'ble Kerala High Court in the case of Sony Pictures Networks India Pvt.Ltd.-2017 (353) ELT 179 (Ker.) wherein it has held as under:-

"14. Now, the sole question remains to be considered is what is the nature of interest that the petitioner is entitled to get. As discussed above in the judgment Commissioner of Central Excise v. ITC (supra), the Apex Court confined the interest to 12% and further held that any judgment/decision of any High Court taking contrary view, will be no longer good law. The said judgment is rendered, in my considered opinion under similar circumstances. So also in Kuil Fire Works Industries v. Collector of Central of Excise [1997 (95) E.L.T. 3 (S.C.)], the pre-deposit made by the assessee was directed to be returned to him with 12% interest. I have also come across the judgment of the Calcutta High Court in

Madura Coats Pvt. Ltd. v. Commissioner of C. Ex., Kolkata-IV [2012 (285) E.L.T. 188 (Cal.)], wherein the peremptory directions of the Apex Court in the judgment of ITC Ltd. (supra) was considered and ordered 12% interest, and further held that when the High Court directed the respondents to pay interest to the appellant in terms of the circular dated 8-12-2004 on the pre-deposit of the delayed refund within two months, it has to be construed that, the Court meant the rate of interest which was awarded by the Supreme Court in the case of Commissioner of Central Excise v. ITC Ltd., which was the rate quantified by the Supreme Court in the absence of any statutory provisions in the Act in question. Even though various other judgments of various High Courts and the various Tribunals was brought to my notice awarding 15% interest, in view of the directions contained in the judgment of the Apex Court in Commissioner of Central Excise v. ITC Ltd. (supra) rate of interest is to be confined to 12%. I am also bound to follow the same. Therefore the interest that is liable to be paid by the respondents as per the directions of this Court in Ext. P12 judgment is fixed at 12% per annum.

15. Taking note of the compendious circumstances and reckoning the law, there will be a direction to the respondents to pay interest to the petitioner at 12% from the date of expiry of three months from 18-11-2002, to the amount of refund already made, within a month from the date of receipt of a copy of this judgment, after adjusting any interest paid."

20. Further, the same view was taken in the case Ghaziabad Ship Breakers Pvt.Ltd.-2010 (260) ELT 274 (Tri.Ahmd.), wherein this Tribunal observed as under:-

"5. I have considered the submissions made by both the sides. I notice that appellants deposited amount in September, October and in November 2004, as per the directions of the department. In September 2004, the Hon'ble Gujarat High Court had dismissed the SCA filed by the appellants against the order of the Tribunal rejecting the appeal for failure to make the pre-deposit. This SCA was dismissed in September 2004 and SLP was filed in the Hon'ble Supreme Court in October 2004. In July 2005, the Hon'ble Supreme Court ordered that if the amount directed to be deposited by the Tribunal is deposited, the appeals before the Tribunal has to be restored and decided on merits. In these circumstances, the amount deposited by the appellant is to be treated as pre-deposit since the matter had not attained finality during the relevant period. Therefore, refund is to be treated as refund of pre-deposit made when the appeal was pending. There is no dispute that the amounts deposited is duty but this is not the issue which has been taken into account while precedent decisions have allowed the interest at 12% on the refunds claimed in respect of pre deposit. I find that in the decisions cited by the learned advocate, interest at 12% has been allowed. Therefore, following the judicial discipline, I consider it appropriate that interest in this case also is to be allowed @ 12%. Accordingly, original adjudicating authority is directed to workout the differential interest amount and make the

payment to the appellants.”

21. As the provisions of section 243 Income Tax Act, 1961 and section 35FF of Central Excise Act, 1944, are pari-materia. Therefore, following the decision of Hon?ble Apex Court in the case of Sandvik Asia Ltd. (supra) and Sony Pictures Networks India Pvt.Ltd. (supra) I hold that the appellants are entitled to claim interest from the date of payment of initial amount till the date of its refund @ 12% per annum.”

8. Further, this decision of this Tribunal was upheld by the jurisdictional high Court of Punjab and Haryana vide its decision dated 14.03.2022 whereby the Revenue?s appeal has been dismissed. Thereafter, the review sought by the department was also dismissed vide order dated 23.05.2022.

9. Here, I would like to mention the decisions of Parley Agro Ltd. Reported at 2022 (380) E.L.T. 219 wherein Identical issue has been considered. In this regard, reference may be made to para 30 ,33, 39,40,41,42 which are reproduced herein below:-

”30. in the present case, the provisions of Section 11B of the Excise Act would not be applicable. This is for the reason that the appellant was not claiming refund of duty. The applicant, as noticed above, had claimed refund of the revenue deposit. Such a finding has also been clearly recorded by the Tribunal in the order dated 31.01.2017 which order has attained finality.

33. There is no provision in the Excise Act, which deals with refund of Revenue deposit and so rate of interest has not been prescribed, when revenue deposit is required to be refunded.

39. In this connection reference can also made to the decisions of the Allahabad High Court in Pace marketing Specialities and Ebiz. Com Private Limited, wherein after making reference to the decision of the Supreme Court in Sandvik Asia Ltd., the High Court granted interest at the rate of 12% per annum in matters relating to refund of amount deposited during investigation and adjudication.

40. In Riba Textiles, the Tribunal also granted interest at the rate of 12% on refund of amount deposited during investigation and at the time of entertaining the stay application.

41. In view of the aforesaid decisions, and the fact that the rate of interest varies from 6% to 18% in the aforesaid Notification issued under Section 11AA, 11BB, 11DD and 11AB of the Excise Act, the grant of interest @ 12 % per annum seems to be appropriate.

42. Thus, for the reason stated above, Excise Appeal no. 70628 of 2019 is allowed and the order dated 28-05-2019, passed by the Commissioner (Appeals) is modified to the extent that interest shall be granted to the appellant @ 12% instead of @ 6% from the date of deposit till the date of payment. Excise Appeal No. 70674 of 2019 filed by the Principal Commissioner for setting aside the order

dated 28.05.2019, passed by the Commissioner (Appeals) is dismissed”.

The above said decision of the Tribunal has been followed by various benches of this Tribunal in the following cases:-

1) Kesar Enterprises Vs. Commissioner of CGST, Noida (Tri.-Allahbad)-2022 (380) ELT 319, Delhi.

2) Allied Chemical and Pharmaceuticals Pvt. Ltd. Vs. CCE & CGST, Jaipur (Tri.-Delhi)-2022 (382) ELT, Delhi.

3) Continental Engines Pvt. Ltd. Vs. Commr. (Appeal), C.Ex & CGST, Jaipur-I, (Tri.-Delhi) -2022 (382) ELT 522 (Delhi).

10. Further, I find that the arguments of the Revenue that Parley Agro Pvt. Ltd. Vs. Commissioner of Central Excise, Noida - 2018 (360) E.L.T. 1005 (Tri.-All.) has been challenged before the Hon’ble Allahabad High Court and the appeal has been admitted will not help the Revenue in any way as no stay has been granted against the said decision. Further, the main thrust of the argument of the Ld. DR that in the present case the duty has been deposited voluntarily and not under protest also does not have any force because consistently it has been held that any amount that is deposited during pendency of the adjudication proceedings or investigation is in the nature of deposit made under protest as held by the Madras High Court in the case of CCE Vs. Pricol Limited - 2015 (320) ELT 703 (Mad). CCE Vs. Eveready Industries India Limited -2017 (357) ELT 11(All.) and Gujarat Engineering Works Vs. CCE -2013 (292) ELT 547 (Tri.-Ahmd.). Further, I find that there are certain contrary decisions relied upon by the Ld. DR but the decision of the Punjab and Haryana High Court in the case of Commissioner of Central Excise, Panchkula Vs. Ms. Riba Textiles Ltd. Cited (Supra) upholding the decision of the Tribunal in Riba Textiles is binding on this Tribunal and by following the ratio of the said decision of the Punjab and Haryana High Court in the case of Riba Textiles, I am of the considered view that the appellant is entitled to claim interest on delayed refund from the date of deposit till the date of payment at the rate of 12% per annum.

11. In result, the impugned order is set aside and the present appeal is allowed.